

1 and having considered the contentions of the parties, and having
2 mailed its proposed order to the parties on the 29th day of May, 1981,
3 and more than twenty days having elapsed from said service.


4 The Board having received exceptions to said proposed order from
5 appellant, and the Board having considered the exceptions and denying
6 same, and being fully advised in the premises, NOW THEREFORE,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
8 Order containing Findings of Fact, Conclusions of Law and Order dated
9 the 29th day of May, 1981, and incorporated by reference herein and
10 attached hereto as Exhibit A, are adopted and hereby entered as the
11 Board's Final Findings of Fact, Conclusions of Law and Order herein.

12 DATED this 20th day of July, 1981.

13 POLLUTION CONTROL HEARINGS BOARD

14 
15 NAT W. WASHINGTON, Chairman

16 
17 DAVID AKANA, Member

18 
19 GAYLE ROTHROCK, Member

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CANADIAN CEDAR, INC.,

Appellant,

V.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

. Respondent.

PCHB Nos. 81-23 and 81-24

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of two \$250 civil penalties for the alleged violation of Section 9.03(b) of Regulation I, which were consolidated for hearing, came before the Pollution Control Hearings Board, Nat W. Washington, member presiding alone at a formal hearing in Tacoma, Washington, on May 20, 1981.

Appellant was represented by its president, Donald E. Kokjer; respondent was represented by its attorney, Keith D. McGoffin. Court Reporter Carolyn M. Koinzan recorded the proceedings.

Having heard the testimony, having examined the exhibits, and

EXHIBIT A

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
5 certified copy of its Regulation I and amendments thereto, which are
6 noticed.

7 II

8 On December 8, 1980, at about 3:57 p.m., respondent's inspector
9 Larry Vaughan noticed a black colored plume rising from appellant's
10 site at 1017 East D Street in the Tacoma tide flats industrial area of
11 Tacoma. After properly positioning himself, he observed the plume
12 which was coming from the boiler stack, and recorded opacities ranging
13 from 50 percent to 100 percent for five and one-half consecutive
14 minutes. After discussing the matter with Edward Fox, appellant's
15 manager, the inspector issued Notice of Violation No. 17495. On
16 January 16, 1981, respondent sent by certified mail Notice and Order
17 of Civil Penalty of \$250 for the alleged violation of Section 9.03 of
18 respondent's Regulation I. The Notice and Order of Civil Penalty is
19 the subject of the instant appeal in case PCHB No. 81-24.

20 The inspector orally informed Mr. Fox concerning respondent's
21 Regulation 9.03 and about the notification provisions of Section 9.16.

22 III

23 On December 30, 1980, at about 8:50 p.m., respondent's inspector
24 Dedrick Sheetz noticed a black colored plume rising from appellant's
25 site at Tacoma tide flats industrial area of Tacoma. After properly
26 positioning himself, he observed the plume which was coming from the

27 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

boiler stack, and recorded opacities ranging from 30 percent to 70 percent for 10 consecutive minutes. After discussing the matter with Edward Fox, appellant's manager, the inspector issued Notice of Violation No. 14967. On January 15, 1981, respondent sent by certified mail Notice and Order of Civil Penalty of \$250 for the alleged violation of Section 9.03 of respondent's Regulation I. The Notice and Order of Civil Penalty is the subject of the instant appeal in case PCHB No. 81-23.

IV

Section 9.03 of respondent's Regulation I makes it unlawful for any person to cause or allow the emission of any air contaminant for a period totaling more than three minutes in any one hour which is of an opacity equal to or greater than 20 percent.

Section 3.29 of Regulation I provides for a civil penalty of up to \$250 per day for each violation of Regulation I.

V

Appellant's president testified but offered no real defense. He pointed out, however, that Canadian Cedar was a new company having only been incorporated in October of 1980, and that Mr. Fox, the resident manager had not yet become familiar with pollution laws and regulations. In each instance, before starting the boiler, appellant caused it to be checked over by Hurley Engineering Company of Tacoma to make sure that it was in proper working order. In each instance the air filter clogged, causing improper combustion and the issuance of excessive smoke. In each instance the boiler was started to protect water pipes from freezing. In neither instance was respondent

1 notified of the start-up condition as required by Section 9.16.

2 Since the appellant was just getting started in business and was
3 not aware of respondent's section 9.16 of Regulation I, since
4 appellant had employed an engineering company to put the boiler in
5 proper working order for start-up, and could have avoided the penalty
6 by giving notice of start-up to respondent, and since the December 8,
7 1980, offense was appellant's first offense, a substantial portion of
8 the penalty for the first offense on December 8, 1980, should be
9 suspended. There were no mitigating circumstances, however, in
10 connection with the second offense on December 30, 1980.

11 VI

12 Any Conclusion of Law which should be deemed a Finding of Fact is
13 hereby adopted as such.

14 From these Findings the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 Appellant violated Section 9.03 of Regulation I as alleged, on
18 December 8, 1980, and on December 30, 1980, by allowing or causing an
19 air emission of smoke in excess of the limits established by the
20 regulations.

21 II

22 Any Finding of Fact which should be deemed a Conclusion of Law is
23 hereby adopted as such.

24 From these Conclusions the Board enters the following

25

26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

ORDER

The two \$250 civil penalties are affirmed, however, \$100 of the civil penalty for the violation which took place on December 8, 1980, is suspended on the condition that appellant not violate respondent's regulations for a period of two years after this order becomes final.

ENTERED: May 29, 1981.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman